

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
HIEN MINH NGUYEN,  
Defendant.

Case No. 15-cr-00203-BLF-1

**ORDER DENYING WITHOUT  
PREJUDICE DEFENDANT'S SECOND  
MOTION FOR PERMISSION TO ISSUE  
RULE 17(c) SUBPOENAS**

[Re: ECF 27]

On September 15, 2015, the Court denied Defendant's first motion for permission to issue subpoenas pursuant to Federal Rule of Criminal Procedure 17(c) on the ground that the motion was not supported by a declaration as required by Criminal Local Rule 17-2(a)(1). *See* Order Denying Without Prejudice Defendant's Application for Permission to Serve Rule 17 Subpoenas, ECF 26.

On September 21, 2015, Defendant filed a second motion for permission to issue Rule 17(c) subpoenas. *See* Motion for Permission to Issue Rule 17(c) Subpoenas, ECF 27. The motion is supported by a declaration. *See id.* However, neither the motion nor the declaration identifies with sufficient particularity what documents Defendant seeks from third parties Diocese of San Jose and Armanino McKenna LLP.


A party to a criminal action may obtain production of documents prior to trial only upon showing: "(1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general 'fishing expedition.'" *United*

1 *States v. Nixon*, 418 U.S. 683, 699-700 (1974) (footnote omitted). In the present case, the  
2 declaration of counsel accompanying Defendant's motion defines the documents that would be the  
3 subject of the requested subpoenas so broadly as to potentially constitute a "fishing expedition."  
4 *See* Decl. of Jay R. Weill ¶ 8, ECF 29.

5 Accordingly, Defendant's second motion for permission to issue Rule 17(c)  
6 subpoenas is DENIED WITHOUT PREJUDICE. The Court notes that although the Government  
7 does not oppose issuance of subpoenas to the third parties in question, the Court cannot permit  
8 issuance of the requested subpoenas unless Defendant satisfies the requirements set forth by the  
9 Supreme Court in *Nixon*. The Court notes further that while Defendant is not required to submit  
10 copies of the proposed subpoenas along with a Rule 17(c) motion, it has been the Court's  
11 experience that such submission can help satisfy the *Nixon* requirements.

12 **IT IS SO ORDERED.**

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14 Dated: September 22, 2015

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16 BETH LABSON FREEMAN  
17 United States District Judge  
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